

MAFMC meeting. The MAFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational season; closed areas; commercial season; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the FMP. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, the MAFMC must consider at least the following factors and provide support and analysis for each factor considered:

- (i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;
- (ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the MAFMC's recommended management measures;
- (iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Action by NMFS.* If the MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing the MAFMC's recommendation and supporting information:

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the MAFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the MAFMC's recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

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Subpart K—Management Measures for the Atlantic Herring Fishery

SOURCE: 72 FR 11277, Mar. 12, 2007, unless otherwise noted.

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least every 3 years, but no later than July of the year before new specifications are implemented, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend

the following specifications for a period of 3 years for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limit (ACL), Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), U.S. at-sea processing (USAP), border transfer (BT), the sub-ACL for each management area, including seasonal periods as specified at § 648.201(d) and modifications to sub-ACLs as specified at § 648.201(f), and the amount to be set aside for the RSA (from 0 to 3 percent of the sub-ACL from any management area). Recommended specifications shall be presented to the New England Fishery Management Council (Council).

(1) The PDT shall meet with the Commission's PRT to review the status of the stock and the fishery and prepare a Stock Assessment and Fishery Evaluation (SAFE) report at least every 3 years. The Herring PDT will meet at least once during interim years to review the status of the stock relative to the overfishing definition if information is available to do so. When conducting a 3-year review and preparing a SAFE Report, the PDT/PRT will recommend to the Council/Commission any necessary adjustments to the specifications for the upcoming 3 years.

(2) If the Council determines, based on information provided by the PDT/PRT or other stock-related information, that the specifications should be adjusted during the 3-year time period, it can do so through the same process outlined in this section during one or both of the interim years.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality;

and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) OFL must be equal to catch resulting from applying the maximum fishing mortality threshold to a current or projected estimate of stock size. When the stock is not overfished and overfishing is not occurring, this is usually the fishing rate supporting maximum sustainable yield (F_{MSY}). Catch that exceeds this amount would result in overfishing.

(2) ABC must be equal to or less than the OFL. The Council's Scientific and Statistical Committee (SSC) shall recommend ABC to the Council. Scientific uncertainty, including, but not limited to, uncertainty around stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues, shall be considered when setting ABC. If the stock is not overfished and overfishing is not occurring, then ABC may be based on F_{MSY} or its proxy, recent catch, or any other factor the SSC determines appropriate. If the stock is overfished, then ABC may be based on the rebuilding fishing mortality rate for the stock (F_{REB}), or any other factor the SSC determines appropriate.

(3) ACL must be equal to or less than the ABC. Management uncertainty, which includes, but is not limited to, expected catch of herring in the New Brunswick weir fishery and the uncertainty around discard estimates of herring caught in Federal and state waters, shall be considered when setting the ACL. Catch in excess of the ACL shall trigger accountability measures (AMs), as described at § 648.201(a).

(4) OY may not exceed OFL (*i.e.*, MSY) and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY , as reduced by social, economic, and ecological factors. OY may equal DAH.

(5) DAH is comprised of DAP and BT.

(c) The Atlantic Herring Oversight Committee shall review the recommendations of the PDT and shall consult with the Commission's Herring

Section. Based on these recommendations and any public comment received, the Herring Oversight Committee shall recommend to the Council appropriate specifications for a 3-year period. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate 3-year specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission, and publish notification in the FEDERAL REGISTER proposing 3-year specifications. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in paragraph (b) of this section.

(d) NMFS shall make a final determination concerning the specifications for Atlantic herring. Notification of the final specifications and responses to public comments shall be published in the FEDERAL REGISTER. If the final specification amounts differ from those recommended by the Council, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section. The previous year's specifications shall remain effective until they are revised through the specification process.

(e) *In-season adjustments.* The specifications and sub-ACLs established pursuant to this section may be adjusted by NMFS to achieve conservation and management objectives, after consulting with the Council, during the fishing year in accordance with the Administrative Procedure Act (APA). Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(f) *Management areas.* The specifications process establishes sub-ACLs and other management measures for the three management areas, which may have different management measures. Management Area 1 is subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

(1) *Management Area 1 (Gulf of Maine):* All U.S. waters of the Gulf of Maine

(GOM) north of a line extending from a point at 70°00' W. long. and 41°39' N. to 42°53'14" N. lat., 67° 44'35" W. long., thence northerly along the Hague Line to the U.S.-Canadian border, to include state and Federal waters adjacent to the States of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

Point	N. lat.	W. long.
1	41°58'	70° 00'
2	42°38'	70° 00'
3	42°53'	69° 40'
4	43°12'	69° 00'
5	43°40'	68° 00'
6	43°58'	67° 22'(the U.S.- Canada Maritime Boundary)

(2) *Management Area 2 (South Coastal Area):* All waters west of 70° 00' W. long., south of 41°39' N. lat., to include state and Federal waters adjacent to the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina.

(3) *Management Area 3 (Georges Bank):* All U.S. waters east of 70°00' W. long. and southeast of the line that runs from a point at 70°00' W. long. and 41°39' N. lat., northeasterly to the Hague Line at 42°53'14" N. lat., 67°44'35" W. long.

(4) *River Herring Monitoring/Avoidance Areas*—(i) *January-February River Herring Monitoring/Avoidance Areas.* The January-February River Herring Monitoring/Avoidance Areas include 4 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) January-February River Herring Monitoring/Avoidance Sub-Area 1.

- (1) 43°00' N Lat., 71°00' W Long.;
- (2) 43°00' N Lat., 70°30' W Long.;
- (3) 42°30' N Lat., 70°30' W Long.;
- (4) 42°30' N Lat., 71°00' W Long.; and
- (5) 43°00' N Lat., 71°00' W Long.

(B) January-February River Herring Monitoring/Avoidance Sub-Area 2.

- (1) 42°00' N Lat., 70°00' W Long.;
- (2) 42°00' N Lat., 69°30' W Long.;
- (3) 41°30' N Lat., 69°30' W Long.;
- (4) 41°30' N Lat., 70°00' W Long.; and
- (5) 42°00' N Lat., 70°00' W Long.

(C) January–February River Herring Monitoring/Avoidance Sub-Area 3.

(1) 41°30' N Lat., 72°00' W Long.;

(2) 41°30' N Lat., 71°00' W Long.;

(3) 40°30' N Lat., 71°00' W Long.;

(4) 40°30' N Lat., 72°30' W Long.;

(5) The southernmost shoreline of Long Island, New York, 72°30' W Long.;

(6) The north-facing shoreline of Long Island, New York, 72°00' W Long.; and

(7) 41°30' N Lat., 72°00' W Long.

(8) Points 5 and 6 are connected following the coastline of the south fork of eastern Long Island, New York.

(D) January–February River Herring Monitoring/Avoidance Sub-Area 4.

(1) 40°30' N Lat., 74°00' W Long.;

(2) 40°30' N Lat., 72°30' W Long.;

(3) 40°00' N Lat., 72°30' W Long.;

(4) 40°00' N Lat., 72°00' W Long.;

(5) 39°30' N Lat., 72°00' W Long.;

(6) 39°30' N Lat., 73°30' W Long.;

(7) 40°00' N Lat., 73°30' W Long.;

(8) 40°00' N Lat., 74°00' W Long.; and

(9) 40°30' N Lat., 74°00' N Long.;

(10) Points 8 and 9 are connected following 74° W Long. and the easternmost shoreline of New Jersey, whichever is furthest east.

(ii) *March–April River Herring Monitoring/Avoidance Areas.* The March–April River Herring Monitoring/Avoidance Areas include 5 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) March–April River Herring Monitoring/Avoidance Sub-Area 1.

(1) 43°00' N Lat., 71°00' W Long.;

(2) 43°00' N Lat., 70°30' W Long.;

(3) 42°30' N Lat., 70°30' W Long.;

(4) 42°30' N Lat., 71°00' W Long.; and

(5) 43°00' N Lat., 71°00' W Long.

(B) March–April River Herring Monitoring/Avoidance Sub-Area 2.

(1) 42°00' N Lat., 70°00' W Long.;

(2) 42°00' N Lat., 69°30' W Long.;

(3) 41°30' N Lat., 69°30' W Long.;

(4) 41°30' N Lat., 70°00' W Long.; and

(5) 42°00' N Lat., 70°00' W Long.

(C) March–April River Herring Monitoring/Avoidance Sub-Area 3.

(1) 41°00' N Lat., The easternmost shoreline of Long Island, New York;

(2) 41°00' N Lat., 71°00' W Long.;

(3) 40°30' N Lat., 71°00' W Long.;

(4) 40°30' N Lat., 71°30' W Long.;

(5) 40°00' N Lat., 71°30' W Long.;

(6) 40°00' N Lat., 72°30' W Long.;

(7) The southernmost shoreline of Long Island, New York, 72°30' W Long.; and

(8) 41°00' N Lat., The easternmost shoreline of Long Island, New York.

(9) Points 7 and 8 are connected following the southern shoreline of Long Island, New York.

(D) March–April River Herring Monitoring/Avoidance Sub-Area 4.

(1) 40°00' N Lat., 73°30' W Long.;

(2) 40°00' N Lat., 72°30' W Long.;

(3) 39°00' N Lat., 72°30' W Long.;

(4) 39°00' N Lat., 73°30' W Long.; and

(5) 40°00' N Lat., 73°30' W Long.

(E) March–April River Herring Monitoring/Avoidance Sub-Area 5.

(1) 40°30' N Lat., 74°00' W Long.;

(2) 40°30' N Lat., 73°30' W Long.;

(3) 40°00' N Lat., 73°30' W Long.;

(4) 40°00' N Lat., 74°00' W Long.; and

(5) 40°30' N Lat., 74°00' W Long.

(6) Points 4 and 5 are connected following 74° W Long. and the easternmost shoreline of New Jersey, whichever is furthest east.

(iii) *May–June River Herring Monitoring/Avoidance Areas.* The May–June River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) May–June River Herring Monitoring/Avoidance Sub-Area 1.

(1) 44°00' N Lat., 69°30' W Long.;

(2) 44°00' N Lat., 69°00' W Long.;

(3) 43°30' N Lat., 69°00' W Long.;

(4) 43°30' N Lat., 69°30' W Long.; and

(5) 44°00' N Lat., 69°30' W Long.

(B) May–June River Herring Monitoring/Avoidance Sub-Area 2.

(1) 42°00' N Lat., 70°00' W Long.;

(2) 42°00' N Lat., 69°30' W Long.;

(3) 41°30' N Lat., 69°30' W Long.;

(4) 41°30' N Lat., 70°00' W Long.; and

(5) 42°00' N Lat., 70°00' W Long.

(iv) *July–August River Herring Monitoring/Avoidance Areas.* The July–August River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) July–August River Herring Monitoring/Avoidance Sub-Area 1.

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(1) 44°00' N Lat., 70°00' W Long.;
(2) 44°00' N Lat., 69°30' W Long.;
(3) 43°00' N Lat., 69°30' W Long.;
(4) 43°00' N Lat., 70°00' W Long.; and
(5) 44°00' N Lat., 70°00' W Long.
(6) The boundary from Points 4 to 5 excludes the portions Maquoit and Middle Bays east of 70°00' W Long.

(B) July–August River Herring Monitoring/Avoidance Sub-Area 2.

(1) 44°00' N Lat., 69°00' W Long.;
(2) 44°00' N Lat., 68°30' W Long.;
(3) 43°30' N Lat., 68°30' W Long.;
(4) 43°30' N Lat., 69°00' W Long.; and
(5) 44°00' N Lat., 69°00' W Long.

(v) *September–October River Herring Monitoring/Avoidance Areas.* The September–October River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) September–October River Herring Monitoring/Avoidance Sub-Area 1.

(1) 44°30' N Lat., 68°00' W Long.;
(2) 44°30' N Lat., 67°00' W Long.;
(3) 44°00' N Lat., 67°00' W Long.;
(4) 44°00' N Lat., 68°00' W Long.; and
(5) 44°30' N Lat., 68°00' W Long.

(B) September–October River Herring Monitoring/Avoidance Sub-Area 2.

(1) 43°00' N Lat., 71°00' W Long.;
(2) 43°00' N Lat., 70°30' W Long.;
(3) 42°30' N Lat., 70°30' W Long.;
(4) 42°30' N Lat., 71°00' W Long.; and
(5) 43°00' N Lat., 71°00' W Long.

(vi) *November–December River Herring Monitoring/Avoidance Areas.* The November–December River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) November–December River Herring Monitoring/Avoidance Sub-Area 1.

(1) 43°00' N Lat., 71°00' W Long.;
(2) 43°00' N Lat., 70°00' W Long.;
(3) 42°00' N Lat., 70°00' W Long.;
(4) 42°00' N Lat., 69°30' W Long.;
(5) 41°30' N Lat., 69°30' W Long.;
(6) 41°30' N Lat., 70°00' W Long.;
(7) The south-facing shoreline of Cape Cod, MA, 70°00' W Long.;
(8) 42°00' N Lat., The west-facing shoreline of Cape Cod, MA Long.;
(9) 42°00' N Lat., 70°30' W Long.;
(10) 42°30' N Lat., 70°30' W Long.;

(11) 42°30' N Lat., 71°00' W Long.; and
(12) 43°00' N Lat., 71°00' W Long.

(13) Points 7 and 8 are connected following the coastline of Cape Cod, MA.

(B) November–December River Herring Monitoring/Avoidance Sub-Area 2.

(1) 41°30' N Lat., 72°00' W Long.;
(2) 41°30' N Lat., 70°00' W Long.;
(3) 40°30' N Lat., 70°00' W Long.;
(4) 40°30' N Lat., 70°30' W Long.;
(5) 41°00' N Lat., 70°30' W Long.;
(6) 41°00' N Lat., 72°00' W Long.; and
(7) 41°30' N Lat., 72°00' W Long.

(g) All aspects of the following measures can be modified through the specifications process:

(1) AMs;
(2) Possession limits;
(3) River Herring Monitoring/Avoidance Areas; and
(4) River herring catch caps.

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§ 648.201 AMs and harvest controls.

(a) *AMs*—(1) *Herring sub-ACLs and ACL*—(i) *Management area closure.* If NMFS projects that catch will reach 92 percent of the annual sub-ACL allocated to a management area before the end of the fishing year, or 92 percent of the Area 1A or Area 1B sub-ACL allocated to a seasonal period as set forth in paragraph (d) of this section, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 92 percent of the sub-ACL, from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring per trip in the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(ii) *Herring fishery closure.* If NMFS projects that catch will reach 95 percent of the ACL before the end of the fishing year, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the ACL, from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring per trip in all herring management areas, and from landing herring